

### **REMARKS**

Consideration and entry of this paper, and reconsideration and withdrawal of any and all objections to and rejections of the application, and allowance of the claims, especially in view of the remarks made herein, are respectfully requested, as this paper places the application in condition for allowance, or in better condition for appeal.

Examiner Switzer is thanked for courtesies extended and for the helpful suggestions offered during the telephonic interviews of January 18, 2005 and January 21, 2005. The Amendments to the claims presented herein reflect matters discussed with Examiner Switzer during those telephonic interviews, and as such are believed to place the application in condition for allowance.

#### **I. Status of the Claims and Formal Matters**

Claims 82-94 are pending in this application. By this paper, claims 82, 92, 93 and 94 are amended and claim 84 is cancelled without prejudice. These amendments have been made simply for clarification and to place the claims in condition for allowance. No new matter has been added by these amendments. Support for the amendments and new claims can be found throughout the specification. The amendments presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

#### **II. Rejections under 35 U.S.C. §112, 2<sup>nd</sup> Paragraph**

Claims 82-91 were rejected under 35 U.S.C. §112, second paragraph for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. The Examiner contends that claim 82 is indefinite because the claim recites “a nucleic acid molecule primer and/or probe”, but then later recites “wherein said probe” making it unclear whether the limitations would also apply to the primer. In accordance with the Examiner’s suggestion, claim 82 is hereby amended to replace the phrase “wherein said probe” with the phrase “wherein said nucleic acid molecule”, thereby overcoming this rejection.

The Office Action also rejected claim 82, alleging that the recitation of “or sequences complementary thereof” was indefinite as it was not clear if this applied to modifications of portions of SEQ ID NO: 1 or modifications of the described probe. In accordance with the

Examiner's suggestion, claim 82 has been amended to replace the phrase "or sequences complementary thereof" with the phrase "sequences complementary to said nucleic acid molecule", thereby overcoming this rejection.

Claim 84 was rejected for being indefinite because it is was allegedly not clear if the claim was intended to cover molecules consisting of eight or nine nucleotides in length or molecules that are ten nucleotides in length wherein eight or nine of the ten nucleotides are successive nucleotides from the delineated regions of SEQ ID NO: 1. By this paper claim 84 is cancelled, thereby rendering this rejection moot.

## **II. Rejections under 35 U.S.C. §112, 1st Paragraph**

Claim 84 was rejected under 35 U.S.C. §112, first paragraph for allegedly failing to comply with the written description requirement. Specifically, the Examiner asserted that the claim encompassed primers and probes eight or nine nucleotides in length, and alleged that the specification only supports primers and probes that are at least ten nucleotides in length. By this paper claim 84 is cancelled, thereby rendering this rejection moot.

## **III. Rejections under 35 U.S.C. §102(b)**

Claim 94 was rejected under 35 U.S.C. §102(b) for allegedly being anticipated by Kunsch et al. Canadian Patent Application No. 2194411. The Examiner asserted that the transitional phrase "having" in claim 94 rendered this claim open-ended with the result that the claim encompassed a nucleic acid comprising one of SEQ ID NO: 2, SEQ ID NO: 3, or SEQ ID NO: 4 – sequences which are allegedly taught by Kunsch et al. In accordance with the Examiner's suggestion, claim 94 is hereby amended to replace "having" with "consisting of", thereby overcoming this rejection.

Claims 82, 84-89, and 92-94 were rejected under 35 U.S.C. §102(b) for allegedly being anticipated by Brennan (U.S. Patent No. 5,474,796). The Examiner contends that Brennan teaches every possible oligonucleotide consisting of 10 successive nucleotides, whether those 10 successive nucleotides are derived from SEQ ID NO: 1 or from of any other sequence. In addition the Examiner contends that the rejection under Brennan applies to claims 92-94, even though these claims recite a primer or probe that is greater than 10 nucleotides long, because the recitation of "a complementary sequence thereof" encompass sequences that are complementary to only fragments of the recited sequences. In accordance with the Examiner's suggestion, claim 82 is hereby amended to recite that the claimed nucleic acid molecule comprises at least 15

successive nucleotides of the recited sequences, and claims 92-94 are amended to clarify that the primers and/or probes are complementary to the whole of the recited sequences, and not just to a portion of the recited sequences. By these amendments the rejections in view of Brennan et al. are overcome.

**CONCLUSION**

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance, or in better condition for appeal. Entry of this paper, favorable reconsideration of the application, and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution.

Respectfully submitted,  
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